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August 20, 2008

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: April 2, 2008
Case Number: TSO-0619

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual's suspended access authorization should be restored. For the reasons detailed below, I have concluded that the Individual's access authorization should not be restored at this time.

I. Background

In January 2007, the Individual reported an arrest for Driving Under the Influence (DUI) of alcohol. DOE Ex. 13. The Local Security Office (LSO) conducted a Personnel Security Interview (PSI), DOE Ex. 5, and referred the Individual to a DOE consultant-psychiatrist (the DOE Psychiatrist).

The DOE Psychiatrist evaluated the Individual and issued a report. DOE Ex. 11. The DOE Psychiatrist diagnosed the Individual with alcohol abuse and opined that the Individual has been a user of alcohol habitually to excess. *Id.* at 8-9, *citing* American Psychiatric Ass'n, Diagnostic and Statistical Manual of Mental Disorders (4th ed. text rev. 2000) (DSM-IV TR). The DOE Psychiatrist further opined that the Individual had not

demonstrated adequate evidence of reformation or rehabilitation. DOE Ex. 11 at 10. The DOE Psychiatrist stated that the Individual "has established a healthier pattern of drinking" but needed alcohol education and 12 months of abstinence to establish reformation. *Id.*

The LSO notified the Individual that information in its possession raised a substantial doubt about his eligibility for a security clearance. DOE Ex. 1 (Notification Letter Attachment, *citing* 10 C.F.R. § 708.8(j) (Criterion J, alcohol). The Notification Letter cited the DOE Psychiatrist's opinion, the 2007 DUI, and several earlier incidents. The Individual requested a hearing, DOE Ex. 2, and I was appointed to serve as the Hearing Officer.

II. The Hearing

At the hearing, the Individual did not dispute the diagnosis of alcohol abuse. Instead, the Individual maintained that he had not consumed alcohol for six months and had a strong counseling and support program.

A. Written Evidence

The DOE submitted an exhibit book. The exhibit book includes the PSI transcript, DOE Ex. 5, and the DOE Psychiatrist's report, DOE Ex. 11.

The Individual submitted a number of exhibits. Ind. Exs. A-G. The exhibits include documentation of his completion of a court-ordered alcohol education program, Ind. Ex. C., and a June 2008 letter from a certified substance abuse counselor at a local counseling center, Ind. Ex. G.

In the June 2008 letter, the substance abuse counselor discusses the Individual's diagnosis, treatment, and prognosis. The Individual's diagnosis is "alcohol abuse." *Id.* The Individual completed a four-month intensive outpatient treatment program, during which he was motivated and gained insight. *Id.* The Individual has continued with a support group, has joined Alcoholics Anonymous (AA), and has an AA sponsor. *Id.* The Individual's representation that he has been abstinent for six months is supported by the negative results of periodic drug and alcohol tests. *Id.* The Individual's "prognosis is good, provided he continues to work the program of recovery." *Id.* The counselor recommended a minimum of one year and the completion of AA's 12 steps. *Id.*

B. Testimony

DOE presented one witness - the DOE Psychiatrist. He testified last. The Individual testified and presented five witnesses: his son, a neighbor, two colleagues, and an Employee Assistance Program (EAP) counselor.

1. The Individual

The Individual has worked at a DOE site and has had a security clearance for over 20 years. Tr. at 43. Several years ago, the Individual was in a difficult domestic situation. *Id.* at 53-61. He and his wife divorced, and he obtained custody of their son. *Id.* at 46-47.

After the January 2007 DUI, the Individual reduced his alcohol consumption and attended a mandatory alcohol education program. Tr. at 44, 64-67. In early December 2007, shortly before his meeting with the DOE Psychiatrist, the Individual had a half-glass of wine at dinner. *Id.* at 67. The Individual has been abstinent from alcohol since that time. *Id.*

After the Individual saw the DOE Psychiatrist, he went to the EAP counselor. Tr. at 69. She recommended that he enter a program, and he followed that recommendation. *Id.* 99-102. He completed an outpatient program and has continued with a support group. *Id.* at 74-75. He attends AA two or three times a week, has obtained a sponsor, and is working on the first AA step. *Id.* at 77-78, 90-91, 94-95.

The Individual intends to remain abstinent. Tr. at 91. The Individual's recovery program has given him insight into his emotions, including those related to his divorce. *See, e.g., id.* at 46-49.

2. The Individual's Son

The Individual's son testified that he and the Individual spend their evenings and weekends together, sometimes with friends and family. Tr. at 22-24. The son has not seen the Individual consume alcohol since the January 2007 DUI. *Id.* at 15, 18. The son is aware of the Individual's recovery program and has attended some meetings with him. *Id.* at 18-20.

3. The Individual's Neighbor

The neighbor has known the Individual for about ten years and has been his neighbor for about seven years. Tr. at 116, 199. The Individual had a difficult domestic situation prior to his divorce. *Id.* at 122-24. Since the divorce, there are many positive changes in the Individual's family life. *Id.* at 123-25.

The neighbor testified concerning the Individual's alcohol consumption. Prior to the January 2007 DUI, the Individual might have a beer with the neighbor; since that time he has had a soda or water. *Id.* at 199-20. At some point, the Individual told the neighbor about the DUI and that he had stopped drinking. *Id.* at 118, 120. The Individual tells the neighbor about his recovery program and is "pretty excited about what he's accomplished." *Id.* at 121.

4. The Individual's Colleagues

Colleague No. 1 participated with the Individual in a league recreational activity in which alcohol was served. Tr. at 104-08. After the January 2007 DUI, the Individual did not consume any alcohol at the activity for the rest of the season. *Id.* at 108-09. When the next season began, the Individual opted not to participate in the activity. *Id.* at 109-10.

Colleague No. 2 has known the Individual for about 16 years "[p]rimarily through work." Tr. at 169-70. The colleague supervises the Individual's work. *Id.* at 170. The Individual is an "[o]utstanding worker," *id.*, and the colleague has never seen any sign of alcohol abuse, *id.* at 171-72.

5. The EAP counselor

The Individual "self-referred" to the EAP in January 2008. Tr. at 27. The Individual discussed his alcohol use with the EAP counselor, and she recommended that the Individual select a program. *Id.* at 27-28, 35-36. The Individual has completed an intensive outpatient phase; he now attends once-a-week group sessions and also has opted to attend AA. *Id.* at 29, 33-34. The EAP counselor met with the Individual two or three times a month during the intensive outpatient phase. *Id.* at 36. The

Individual's son is supportive of his treatment program and has participated in some meetings with him. *Id.*

The EAP counselor has reviewed, and agrees with, the DOE Psychiatrist's report. Tr. at 33. The EAP counselor's prognosis for the Individual is "in alignment with the treatment program" and "very good" as long as he completes the program. *Id.* at 37.

6. The DOE Psychiatrist

The DOE Psychiatrist was present throughout the hearing. He testified last.

The DOE Psychiatrist discussed his evaluation seven months earlier. The diagnosis of alcohol abuse was based on historical facts that are not in dispute. Tr. at 144. At the time of the interview, the DOE Psychiatrist thought that the Individual was "forthright, honest, open and motivated to stop drinking." *Id.* at 138.

The DOE Psychiatrist discussed what he had heard at the hearing. He noted a "lot of positive information." Tr. at 141. He cited, *inter alia*, the Individual's awareness, his recovery program, and the "tremendous credit" that he deserves for being a "very responsible parent." *Id.* at 141-42. The DOE Psychiatrist testified that the Individual had a "good prognosis" and was "doing everything that he should do." *Id.* at 143. The DOE Psychiatrist continued to opine, however, that the Individual needed 12 months of abstinence to demonstrate a full recovery. *Id.* at 143-44, 166-67.

III. Applicable Regulations

The regulations governing an individual's eligibility for access authorization (also referred to as a security clearance) are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id.* See generally *Dep't of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security-clearance determinations should

err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

If a question concerning an individual's eligibility for a clearance cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9. The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. *Id.* § 710.21(b)(3). At a hearing, the burden is on the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, i.e., that access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." *Id.* § 710.27(a).

IV. Analysis

It is undisputed that the Individual has a diagnosis of "alcohol abuse." The DOE Psychiatrist, the Individual's substance abuse counselor, and the EAP counselor all agree on this issue. See DOE Ex. 11 (DOE Psychiatrist's report), Ind. Ex. G (letter from substance abuse counselor), Tr. at 33 (testimony of EAP counselor).

The Individual's diagnosis of alcohol abuse raises a security concern. Both the DOE regulations and applicable adjudicative guidelines identify a diagnosis of alcohol abuse as derogatory information raising a security concern. See 10 C.F.R. § 710.8(j); Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House) (the Adjudicative Guidelines) ¶ G.22(d), (e).

In order to resolve a security concern, the Individual must demonstrate adequate evidence of reformation or rehabilitation. 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes reformation or rehabilitation from alcohol abuse, but instead makes a case-by-case determination based on the available evidence. In making this determination, Hearing Officers properly give significant weight to the opinions of psychiatrists and other mental health professionals. See, e.g., *Personnel Security Hearing, TSO-0477*, 29 DOE ¶ 83,060 at 87,031 (2007).

The Individual has established that, as of the time of the hearing, he had abstained from alcohol for six months, had

completed an intensive outpatient treatment program, and was actively involved in group counseling and AA. The Individual testified to these matters, as did other witnesses to the extent of their knowledge. I believe that all the witnesses testified openly and honestly.

I cannot conclude, however, that this six-month period is adequate to demonstrate reformation or rehabilitation. All three experts agree that the Individual needs 12 months of abstinence to complete his recovery. Tr. at 143-44, 166-67 (DOE Psychiatrist); Ind. Ex. G (Individual's substance abuse counselor); Tr. at 35 (Individual's EAP counselor). I have no reason to question their opinion, which is in line with expert testimony we have heard in similar cases. See, e.g., *Personnel Security Hearing, TSO-0477*, 29 DOE ¶ 83,060 at 87,031 (2007). Accordingly, I find that the Individual has not demonstrated adequate evidence of reformation or rehabilitation at this time.

In making this determination, I recognize that the Individual's attorney has argued that his alcohol problem is not a security concern because there is no evidence that it has interfered with his work. See, e.g., Ind. Exs. B, D, E (performance appraisals, certificates of appreciation, and letters of commendation). Alcohol abuse is an unacceptable security risk, even if it has not resulted in a security breach in the past. See, e.g., *Personnel Security Hearing, VSO-0536*, 28 DOE ¶ 82,881 at 86,112 (2002), citing *Personnel Security Hearing, Case No. VSA-0174*, 27 DOE ¶ 82,752 at 85,507 (1998). Accordingly, an individual with a diagnosis of alcohol abuse must demonstrate reformation or rehabilitation. As indicated above, the unanimous expert opinion is that needs 12 months of abstinence to establish recovery from his alcohol abuse.

V. Conclusion

The Criterion J concern set forth in the Notification Letter has not been resolved. Accordingly, I cannot conclude that access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Based on the foregoing, the Individual's suspended access authorization should not be restored at this time. Any party may seek review of this Decision by an Appeal Panel. 10 C.F.R. § 710.28.

Janet N. Freimuth
Hearing Officer

Office of Hearings and Appeals

Date: August 20, 2008